

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-CT-3078-BO

SHELLY WASHINGTON,)
Plaintiff,)
)
v.) ORDER
)
OFFICER J. RIVERA,)
Defendant.)

No. 5:11-CT-3086-BO

SHELLY WASHINGTON,)
Plaintiff,)
)
v.) ORDER
)
SHERIFF EDWARD J. MCMAHON,)
Defendant.)

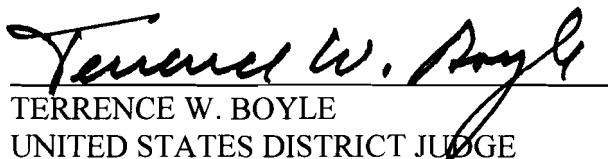
Plaintiff seeks voluntary dismissal of both above referenced cases. An action may be dismissed voluntarily by a plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R. Civ. P. 41(a)(1). Otherwise, an action shall not be dismissed on the plaintiff's request except upon order of the court. See Fed. R. Civ. P. 41(a)(2).

Rule 41(a)(2) permits voluntary dismissal upon such terms and conditions that the court deems proper. A motion under Rule 41(a)(2) should not be denied absent "legal" or "substantial" prejudice to defendants. See Ellett Brothers, Inc. v. U.S. Fidelity and Guar. Co., 275 F.3d 384, 388 (4th Cir. 2001); Ohlander v. Larson, 114 F.3d 1531, 1537 (10th Cir. 1997);

Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). Furthermore, the district court has broad discretion in deciding a 41(a)(2) motion. Davis v. USX Corp., 819 F.2d 1270, 1273 (4th Cir. 1987). Factors often considered include: (1) defendant's effort and expense in preparing for trial, 2) excessive delay or lack of diligence on plaintiff's part, 3) insufficient explanation of the need for a dismissal, and 4) the current stage of litigation. Lang v. Manufacturers & Traders Trust Co., ____ F. Supp. ____, 2011 WL 1195614 at *5 (D. Md. March 24, 2011).

The request for the dismissal was done early in the litigation, and the motion for voluntary dismissal without prejudice is ALLOWED (D.E. # 7 in 5:11-CT-3086-BO and # 18 in 5:11-CT-3078-BO). The Clerk is DIRECTED to close both cases.

SO ORDERED, this the 23 day of January 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE